IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 16TH JULY 2007 / 25TH ASHADHA 1929

WP(C).No. 22685 of 2003(A)

I.A.109/02 IN O.S.679/1984 OF MUNSIFF'S COURT, ERNAKULAM.

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PETITIONER:

V.K.CHANDRASEKHARAN NAIR,
S/O. KUNJU NAIR, PRESENT CONVENOR OF THE
PUTHENKAVU N.S.S. KARAYOGAM, PUTHENCRUZ.

BY ADV. SRI.M.CHATHUKUTTY NAMBIAR

RESPONDENTS:

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1. THE STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY,
SECRETARIAT, THIRUVANANTHAPURAM.

2. VADAVUCODE PUTHENCRUZ GRAMA PANCHAYAT,
REPRESENTED BY ITS SECRETARY, PUTHENCRUZ,
ERNAKULAM DISTRICT.

3. HUNTERS SPORTING CLUB,
REGD. SOCIETY NO.ER.414/88, HAVING ITS REGISTERED
OFFICE AT PUTHENCRUZ.

R1 BY GOVT.PLEADER SRI.SHYSON P.MANGUZHA.
R3 BY ADV. SRI.ANIL S.RAJ
SMT.RAJANI.K.N.
R2 BY ADV.SRI.VAKKOM N.VIJAYAN
SMT.VINITHA PRASANNAN
SMT.RAGAM.K.P.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.22685/03

APPENDIX

PETITIONER'S EXTS:

EXT.P1 – TRUE COPY OF ORDER IN O.P.1313/75 DT.20.3.75 OF THIS COURT.

EXT.P2 – TRUE COPY OF JUDGMENT IN A.S.4/87 OF DIST. COURT, ERNAKULAM, DATED 1.3.91.

EXT.P3 – TRUE COPY OF JUDGMENT IN SA.229/92 DT.22.1.99 OF THIS COURT.

EXT.P4 – TRUE COPY OF IMPLEADING PETITION CMP.2477/2000 FILED BY R3 IN S.A.229/92 BEFORE THIS COURT DT.12.12.2000.

EXT.P5 – TRUE COPY OF ORDER IN EXT.P4 PETITION DT.27.9.01.

EXT.P6 – TRUE COPY OF ORDER IN I.A.109/02 IN O.S.679/84 DT.29.5.02 OF MUNSIFF'S COURT, ERNAKULAM.

EXT.P7 – TRUE COPY OF JUDGMENT IN S.A.229/92 DT.27.9.01.

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C)No.22685 OF 2003

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DATED THIS THE 16th JULY, 2007

J U D G M E N T

The learned counsel for the 3rd respondent submits that the 3rd respondent has not been served with a copy of the Writ Petition and seeks a direction to the petitioner to serve a copy of the Writ Petition on the 3rd respondent. I am not inclined to entertain the above request of the 3rd respondent since I notice that the 3rd respondent entered appearance before this Court in response to this Court's notice as early as on 12.1.2004 and this Writ Petition stood posted for consideration by this Court on various dates. None of the earlier orders passed in this Writ Petition indicate any complaint voiced by the 3rd respondent of not having received a copy of the Writ Petition.

2. The learned counsel for the petitioner submits that Ext.P6 order was passed by the learned Munsiff even without bothering to find out whether the petitioner who is the plaintiff in the suit has been served with a copy of the application filed by the 3rd respondent. According to the learned counsel, Ext.P6 is beyond the scope of the remand order passed by this Court in Ext.P7. Counsel invited my attention to Ext.P5 which will show that a similar application for impleadment filed by the 3rd respondent before this Court in Second

Appeal was dismissed by this Court.

3. The submissions of the learned counsel regarding the scope of the remand order and the order passed on Ext.P5 have considerable appeal. At the same time, I notice from Ext.P6 that it was in the presence of the counsel for the present petitioner (who was represented by the then office-bearers of the Karayogam) that Ext.P6 was passed. In all probability, Ext.P6 order in I.A.No.109 of 2002 was passed by the learned Munsiff on the day the I.A. stood posted for objections. This is why Ext.P6 proceeds on the basis that no objections are filed. Considering Ext.P7 judgment of this Court in the Second Appeal and Ext.P5 order dismissing the impleadment application filed by the 3rd respondent, the learned Munsiff should have granted reasonable time to the petitioner for filing objections to I.A.No.109 of 2002.

4. Accordingly I set aside Ext.P6 and remit I.A.No.109 of 2002 back to the Munsiff's Court. I permit the petitioner to file objections to I.A.109 of 2002 within two weeks from today before the court below. The argument of the learned counsel for the Panchayat that in view of the order of the Supreme Court in SLP (Civil)No.17526 of 1999, Ext.P6 cannot survive any longer will also be considered by the learned

Munsiff. The court below will take fresh decision on the I.A. after hearing the petitioner, the 3rd respondent and the other parties in the suit including the Government, within one month of receiving copy of this judgment.

The Writ Petition is allowed as above. No costs.

(PIUS C.KURIAKOSE, JUDGE)

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